

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of  
Steven W. Engen, DC,  
License No. 1505

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 1:30 p.m. on September 4, 1992, at the Office of Administrative Hearings in Minneapolis, Minnesota. The record on this matter closed on September 30, 1992, the date of receipt of the transcript of the hearing.

Robert T. Holley, Special Assistant Attorney General, 500 Capitol Office Building, 525 Park Street, St. Paul, Minnesota 55103, appeared on behalf of the Minnesota Board of Chiropractic Examiners. Steven W. Engen, 1526 Washington Street, Box 5, Blair, Nebraska 68008, appeared pro se.

Notice is hereby given that, pursuant to Minn. Stat. 14-61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Board at Suite 20, 2700 University Avenue West, St. Paul, Minnesota 55414. Pursuant to Minn. Stat. 214.10, subd. 2, a board member who was consulted during the course of an investigation may participate at the hearing, but may not vote on any matter pertaining to the case.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether grounds exist pursuant to Minn. Stat. 214.101, subd. 1, to suspend or make the Licensee's license to practice chiropractic probationary.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 27, 1992, the Minnesota Board of Chiropractic Examiners received an Order from District Court Judge David E. Christensen directing it to proceed pursuant to Minn. Stat. 214-101 to determine if Dr. Steven Engen's license to practice should be suspended or placed on probation. Subsequently, a Notice of and Order for Hearing was issued by the Board on August 24, 1992 scheduling a hearing for September 4, 1992. The Notice of and order for Hearing specifically recited that the hearing was being held

pursuant to Minn. Stat. 214.101 and resulted from a District Court determination that the Licensee was found to be in arrears in the amount of \$2,730.00 in court-ordered child support.

2. Steven W. Engen currently holds a license to practice chiropractic in the State of Minnesota; License No. 1505 which expires on December 31, 1992. At the present time, Dr. Engen is not practicing chiropractic in the State of Minnesota, but has moved to the State of Nebraska with the intent to practice there.

3. On December 9, 1992, the Honorable David E. Christensen conducted a telephone conference call hearing to consider a Motion filed by the Petitioner in the case of Pamela R. Mailander, f/k/a Pamela R. Engen, Petitioner v. Steven W. Enoen. Respondent, for the appointment of a receiver to collect and pay child support. On March 25, 1992, Judge Christensen issued an Order which contains, inter alia, the following provisions:

1. That Leland Bush is appointed as Receiver effective May 1, 1992 unless Respondent, prior to April 15, 1992, agrees in writing to make all future required child support payments and further to pay an additional \$100 per month towards arrearages.

2. That in the event Respondent is unwilling to pay the child support as previously ordered and as provided herein, Respondent may elect prior to April 15, 1992 to have the receivership limited to a partial receivership. Such partial receivership is conditioned upon Respondent and all employees authorized to write checks on the business account agreeing to the following:

a. That all receipts from the business shall be deposited into a business account. That Respondent and/or his employees shall not write any checks on said account for furniture, fixtures, equipment, vehicles, owner's draw, and legal and accounting unless such checks are cosigned by the Receiver, and in no event shall any check be written for more than \$500, excluding malpractice insurance, unless such check is cosigned by the Receiver.

b. That no checks in excess of nine (9) percent of the amounts

shown on Exhibit No. 3 attached hereto shall be written  
in any one month unless cosigned by the Receiver.

C. That the owner's draw shall be deposited into the  
Receiver's account and distributed as set forth in Paragraph 3.

3. That in the event Respondent is unwilling to pay child  
support as previously ordered and as provided herein, and has not  
elected to participate in a partial receivership, then all receipts from  
the business shall be deposited into the Receiver's account. The  
Receiver shall have check writing authority to distribute  
funds of said Receiver's account and shall ensure that all reasonable  
and necessary business expenses of the Respondent are paid. The  
Receiver shall further pay to the Respondent as and for his  
living expenses the sum of One Thousand One Hundred Fifty-Eight  
Dollars Seventy-Five Cents (\$1,158.75); shall set aside appropriate  
amounts for his Federal and State income taxes, and, to the extent  
available, shall pay to the Petitioner the sum of One Thousand Three  
Hundred Sixty-five Dollars (\$1,365), plus an additional One Hundred  
Dollars (\$100) which shall be applied to arrearages. (Emphasis  
added.)

4. That the Receiver shall pay himself from the Receiver's account the sum of Eighty-Five Dollars (\$85-00) per hour, plus reasonable travel expenses. The Receiver shall keep records of his collections and disbursements which shall be available for review upon the request of either party or the Court.

4. Leland Bush assumed the duties of a receiver as directed by the District Court on May 1, 1992. The "receiver account" shows the following financial transactions between May 1 and June 23, 1992:

			Deposit	Payment	
Balance					
5/08/92	S. Engen	\$1,000			
5/08/92	S. Engen		\$ 269.47	\$ 730.53	
5/18/92	S. Engen	1,000			1,730.53
5/18/92	S. Engen		269.47		1,461.06
5/20/92	Lee Bush-Fees		1,283.50		177.56
5/27/92	checks		29.00		148.56
5/29/92	S. Engen	2,000			2,148.56
5/29/92	S. Engen		538.94		1,609.82
6/15/92	S. Engen		80.87		1,528.75
6/15/92	S. Engen		579.38		949.37
6/15/92	S. Engen	5,500			6,449.37
6/15/92	IRS		3,360.00		3,089.37
6/15/92	MN Dept of Rev		933.33		2,156.04
6/23/92	Pamela Mailander		1,365.00		791.04

5. Dr. Engen's monthly child support obligation was \$1,365.00. As the receiver's records show, this monthly obligation was not paid in May but was paid at the end of June, 1992.

6. On July 22, 1992, the Honorable David E. Christensen, District Court Judge, issued an Order to the Minnesota State Chiropractic Board informing the Board that the Court had ordered that judgment be entered against Dr. Engen for the sum of \$2,730.00 for delinquent child support. Judge Christensen additionally ordered that the Board proceed "according to statute to determine if Respondent's [Dr. Engen] license to practice should not be suspended or if he should not be placed on probation." Additionally, Judge Christensen further informed the Board that "Petitioner has specifically requested that Respondent be placed on probation as opposed to having his license suspended."

7. On or about September 1, 1992, Dr. Engen filed Motions with Murray

County District Court with respect to his dissolution and the Orders issued by Judge Christensen. Specifically, Dr. Engen requested that the Court (1) modify the original decree to reflect a guideline child support obligation pursuant to Minn. Stat. PRGLI\ WKH original decree to allow him the tax deductions for the first and fourth children; (3) permit the modification requested to be retroactive to January 1, 1991; (4) dismiss all judgments, levies, or other "restrictive actions" to date arising out of the dissolution; (5) permit the "relocation" of personal items from Slayton, Minnesota to Blair, Nebraska; (6) authorize payment from the receiver of monies due to underpayment of estimated federal income tax liability; (7) authorize payment from the receiver of monies due to an underpayment of estimated state income tax liability; (8) modify the original decree to permit more liberal visitation; (9) modify the original decree to allow a reduction in a trust account payment by Dr. Engen during months that the children are living with

him; and (10) reduce the child support judgment against him "to zero during the complete tenure of the receiver, from May 1, 1992 through August 31, 1992, as receiver [was] paid full and complete child support in accordance with the Court's receivership Order for that time period." Dr. Engen's Motions were scheduled to be heard on September 14, 1992 in the Murray County Courthouse, Slayton, Minnesota.

8. On October 5, 1992, Judge Christensen issued an Order denying all of Dr. Engen's Motions on the grounds that the Motions were untimely filed and that Dr. Engen failed to appear on September 14, 1992, the scheduled date for hearing the Motions. Additionally, Judge Christensen awarded judgment against Dr. Engen in favor of Pamela R. Mailander in the amount of \$7,114.26, the amount of unpaid child support through August 31, 1992.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Administrative Law Judge and the Board of Chiropractic Examiners have jurisdiction in this matter pursuant to Minn. Stat. 14.50, 518.551, subd. 12, and 214.101. The Notice of Hearing was proper in all respects.

2. Minn. Stat. 214.101, subd. 1 requires that, "within 30 days of receipt of the Court Order, (the licensing board shall] provide notice to the Licensee and hold a hearing." The Court Order directing the Board to conduct a hearing in this case was received by the Board on July 27, 1992. The hearing was not held until September 4, 1992. The Judge concludes that the failure to comply with the 30-day hearing requirement is not a fatal defect to this proceeding. The general rule of law is that a time limitation imposed on a state agency by the legislature is normally considered to be only directory rather than mandatory if the statute does not contain provisions expressing a remedy for the failure to comply with the time limit requirement. e.g. , Heller v. Holner, 269 N.H.2d 31, 33 (Minn. 1978).

3. Minn. Stat. 214.101, subd. 1 provides that:

If the Board finds that the person is licensed by the

Board and evidence of full payment of arrearages found to be due by the court is not presented at the hearing, the Board shall suspend the license unless it determines that probation is appropriate under subdivision 2. The only issues to be determined by the Board are whether the person named in the court order is a licensee, whether the arrearages have been paid, and whether suspension or probation is appropriate. The Board may not consider evidence with respect to the appropriateness of the court order or the ability of the person to comply with the order.

Subdivision 2 of the above-referenced statute provides that:

If the Board determines that the suspension of the license would create an extreme hardship to either the licensee or to persons whom the licensee serves, the



Board may, in lieu of suspension, allow the licensee to continue to practice the occupation on probation. Probation must be conditioned upon full compliance with the court order that referred the matter to the Board. The probation period may not exceed two years, and the terms of probation must provide for automatic suspension of the license if the licensee does not provide monthly proof to the Board of full compliance with the court order that referred the matter to the Board or a further court order if the original order is modified by the court.

4. Steven W. Engen is a licensee, licensed by the Minnesota Board of Chiropractic Examiners.

5. The outstanding arrearages established in the Court Orders dated July 22, 1992 and October 5, 1992 have not been paid.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Minnesota Board of Chiropractic Examiners take appropriate disciplinary action against Dr. Engen's license pursuant to Minn. Stat. 214.101.

Dated this            day of October, 1992.

PETER C. ERICKSON  
Administrative Law Judge

#### NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, Transcript Prepared by Karen Toughill, Court Reporter.

#### MEMORANDUM

Several issues arose during this proceeding which the Judge feels compelled to discuss, at least briefly. The first issue is addressed in Conclusion Number 2 above concerning the appropriate disposition of a Motion to dismiss by the Licensee when the Board does not follow the statutory directive to hold a hearing within 30 days. The Judge is not aware of any reason why the normal rule of law set forth in the conclusion above should not



be followed in this case. It is obvious that the legislature intended for an expeditious hearing on petitions filed pursuant to Minn. Stat. 518.551, subd. 12. However, an "untimely" hearing would not prejudice the Licensee but rather act to his/her benefit. Consequently, the Judge sees no rationale for dismissing an action such as this due to a board's failure to meet the 30-day hearing deadline.

The Board candidly pointed out as the hearing commenced that this was a case of first impression; that this type of action had not been previously heard by any other state board or the Office of Administrative Hearings. The Judge believes that this assertion is true. At the hearing on this matter, Dr. Engen testified that he had given sufficient money to the receiver to pay his child support obligation. Dr. Engen further argued that payment of the obligation was the receiver's responsibility, not his. Additionally, Dr. Engen testified that since the divorce decree was issued in 1988, there did exist an arrearage, but only of approximately \$299-00, and that no arrearages were incurred subsequent to May 1 of 1992. This issue, whether the receiver (Leland Bush) had an obligation to pay child support from the monies he (Bush) received before he paid his own fees, was cogently argued by Dr. Engen. However, the statute (Minn. Stat. 214.101, subd. 1) restricts the jurisdiction of the Board to only a few issues: whether the person named is a licensee; whether the arrearage has been paid; and the appropriate remedy. Dr. Engen's contention that the arrearage (at least any amount over \$299.00) had been paid because the receiver had sufficient funds to pay the child support obligation might fall within the jurisdictional restrictions. However, due to the subsequent Court Orders issued by Judge Christensen (see below), this Judge will not address the issue further.

The Judge received into evidence Dr. Engen's Motions which were scheduled to be heard on September 14, 1992. Those Motions, as set forth in the Findings of Fact above, deal, in part, with the arrearage issue which is critical to this case. Because the October 5, 1992 Court Orders issued by Judge Christensen were issued subsequent to the close of the record in this proceeding, the Judge has taken official notice of those Orders. Judge Christensen determined that an arrearage of over \$7,000 existed as of

August 31, 1992 and awarded judgment to Dr. Engen's ex-spouse for that amount. Because Dr. Engen had a chance to address these issues in district court (even though he did not appear on the date set for hearing), the Judge is not going to further address the issue of whether an arrearage exists or whether the receiver should have paid Dr. Engen's child support obligation.

Subdivision 3 of Minn. Stat. 214.101 states that, "if the Licensee has a modification petition pending before the Court, the Board may, without a hearing, defer a revocation of probation and institution of suspension until receipt of the Court's ruling on the modification order." This language is very unclear and it would not seem to apply to a situation where a modification petition was pending but no hearing had previously been held pursuant to a petition filed under Minn. Stat. 518.551, subd. 12. The language refers to revocation of probation and institution of suspension" as if a hearing had already been held and probation had been ordered by a board. However, it is quite likely that an arrearage could be incurred while a modification petition is pending and there had not already been a petition, hearing and decision to take action against the license. This scenario is not addressed by the statute but would seem to be the most likely situation when a decision to defer a hearing would be appropriate.

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Lastly, the Board argued at the hearing that it had authority to assess Dr. Engen all costs of the proceeding pursuant to Minn. Stat. 148.10, subd. 3(c). However, the Judge points out that the referenced statute permits the assessment of costs of "proceedings resulting in the disciplinary action", arising from a violation of grounds set forth in Minn. Stat. 148.10. The Judge doubts that an action brought pursuant to Minn. Stat. 518.551, subd. 12 is a "disciplinary" proceeding within the meaning of Minn. Stat. 148.10, subd. 3(c).

P.C.E.